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Attached is the researcher's guide for historic irrigation ditches as specified in Stipulation 3 of the Columbus - Absarokee Memorandum of Agreement (signed July, 1989). Please make any editorial changes you feel are necessary and include it in a future "Montana Historic Preservation Planning Bulletin."

If you have any questions, please contact Jon Axline at 444-6258.

Edrie Vinson

Edrie L. Vinson, Chief
Environmental & Hazardous Waste Bureau

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Attachment

cc: Roy R. Ventura, Jr., P.E., Billings District Engineer
David S. Johnson, P.E., Preconstruction Bureau
DALE PAULSON, FHWA
BOB CLARK, MONTANA HISTORICAL SOCIETY w/ATTACH.
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Records Related to the Research and Evaluation of Irrigation Ditches in Montana.

by

Jon Axline

Montana Department of Transportation

Historically, Montana has not advocated the centralized control of its water resources. Instead, it relied on the local (county) administration of the state's water rights. Consequently, until 1939 there were few records of water claimants in Montana. The State required the people who appropriated water to post their claims at the point of diversion of the stream or river. Although the State requested that appropriators register their claims with the county clerk, few chose to do so since it did not invalidate their claim to the water. When adjudication of water rights was necessary, the litigant need only tell the court the date of appropriation and the amount of land irrigated. The appropriation date was most important to settlement of the case (the "First in time, first in right" principle). Because of the Yellowstone Compact with Wyoming in 1935, however, the state increasingly found it necessary to determine vested rights to interstate streams.

Montana's decentralized and haphazard records put the state at a distinct disadvantage when compared to those state's--such as Wyoming--with centralized water rights records. In an attempt to partially rectify the problem without arousing significant opposition from water users, the Montana Legislature initiated the Montana Water Resources Survey in 1939. The purpose of the survey was to collect as much information as possible about the state's irrigation systems, including number of irrigated acres, dates of appropriation and descriptions of the irrigation companies. The Legislature intended the information for use in

adjudication cases and as a backhanded and innocuous attempt to centralize the state's water records. The State Engineer's office supervised the project.

State Engineer Fred Buck developed a program to conduct a county-by-county survey of Montana. The resulting directory was intended to be the most complete record possible for irrigation systems in the state. Each county survey (published as a "bulletin") contained detailed maps, a short county history and description of resources and, most importantly, a list of appropriated streams, the amount of water appropriated, acres irrigated and description of the ditch companies. Buck stated in 1949 that the survey's "intention was to provide as much data as possible relative to water rights records of the various counties, as well as to assemble such other information as may be available from all sources having knowledge of these various water rights." (Buck, *Montana Water Resources Survey: Musselshell County*, p. 4).

Buck discovered that few appropriation claims had been filed with the county clerks. What few records existed were not standardized and varied between county clerks. Searches of the existing records revealed little but tabulations of the dates of filing for the appropriators and no information about the amount of land irrigated or the size of the claim. The point of diversion, moreover, was often stated indefinitely with the claimant's property listed simply as "his land." Buck wrote that "A purchaser of a ranch property where he has to depend on irrigation from a stream that is not adjudicated, has no way of determining the validity or priority of his water right." (Buck, *Ibid*, p. 2).

Buck relied heavily on the scant information located at county courthouses, oral informants and adjudication records. "Old-timers" played an important role in the survey since the courthouse records were nearly useless. The result was as comprehensive a record of water rights in Montana as was possible. Each volume of the survey encompassed a single county or, towards the end of the project,

group of counties. If the irrigation system was not listed in the Montana Water Survey, Buck and his engineers were unable to gather any information about it. In most cases, the ditches were either long-abandoned or there were no records of them in the county courthouse.

The State Engineer's office published 46 volumes of the Water Resource Survey before the state terminated the project in 1971. Those counties surveyed but not published include Daniels, Sheridan, Roosevelt, Petroleum, Garfield, Prairie and Fergus counties. Only portions of Beaverhead County were surveyed. The field notes for the unpublished surveys are located at the Billings office of the Department of Natural Resources and Conservation (DNRC). Yellowstone County was the first county surveyed by the State Engineer's office in 1943. Carbon County was the only county re-surveyed under the program. The Water Resource Survey bulletins provide the best and most complete information available about irrigation in Montana.

The Montana Water Resource Survey books are located at the DNRC in Helena and their regional office in Billings. They are also located at the Montana Historical Society Library, Montana State Library and at the Montana Department of Transportation headquarters in Helena. The original field notes for the survey are stored at the DNRC's Billings office.

The DNRC was created by the Executive Reorganization Act of 1971. The department provided the centralized services that Montana's irrigators opposed for over a century. The department also assumed the duties of the Montana Water Resources Board and replaced the State Water Conservation Board and State Engineer's office. The DNRC, however, continues to rely heavily on the Water Resources Surveys. It does not maintain records of privately owned ditch systems. Instead, the DNRC keeps records of the state's publicly owned and maintained ditch systems. Irrigation records are housed at the DNRC's Billings

Regional Office.

The Billings DNRC office also maintains a list of irrigation companies, owners and contacts. The list was originally compiled by the Water Resource Survey in the 1960s and has been updated annually since then.

The Secretary of State's Office in Helena maintains a list of privately owned ditches. This office also continuously updates the list.

Other sources of useful information include the United States Census reports, Montana State Experiment Station bulletins, General Land Office survey plats (available at the Montana Historical Society, Bureau of Land Management and Montana Department of State Lands). Since water rights and ditch company stock were treated as part of land transfers, they frequently appear in the deed books, mortgage records and, infrequently, in the probate records located at the county courthouses. Occasionally, county histories provide details about irrigation systems and their owners.

The Montana Department of Transportation's original "As-built" highway construction plans also provides valuable information regarding irrigation ditches. The "As-builts" show the name of the ditch, its original configuration and subsequent modifications of the feature as it was affected by highway construction activities.

Some county Soil Conservation Service offices have files concerning specific ditch systems in their areas. The Stillwater County Soil Conservation Service (SCS) office maintains files of the county's ditches. The files contain the Water Rights Location Record for the individual ditches as well as a list of ensuing modifications to the ditch structures and rechanneling of the ditches themselves. As in the case of the Lower Stillwater Irrigation District, the SCS files are an invaluable source of information on the individual ditch systems. The files are incomplete, however, because ditch owners are not legally required to

register their property with the SCS.

A combination of the above records were used to make a Determination of Eligibility for the eight ditch systems that comprise the Lower Stillwater Historic Irrigation District. The district is located between the Fishtail River near Absarokee and the Yellowstone River south of Columbus. Each ditch system in the district is privately owned and is used by a small number of users. The first ditch was constructed in 1875 and carried water to the second Crow Reservation Agency on East Rosebud Creek. Settlers constructed the remaining seven ditch systems after the reservation was reduced in 1883. The newest ditch in the system was built in 1914. The Agency Ditch is the nucleus of the historic district and is individually eligible for the National Register of Historic Places.

The development of the Lower Stillwater Historic Irrigation District coincided with the settlement of the area and has remained a significant factor in its agricultural productivity. The extensive irrigation records for the valley gave the researcher an unusual opportunity to evaluate the historic significant of the irrigation systems and its impact on the lower Stillwater Valley. Ironically, the researcher also relied heavily on the information provided by local landowners--much the same way Fred Buck and his engineers did half a century before.